



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Pacific Architects and Engineers, Inc.

File: B-274405.2; B-274405.3

Date: December 18, 1996

Howell Roger Riggs, Esq., for the protester.

Stuart Young, Esq., and Cheralyn S. Cameron, Esq. for DynCorp, an intervenor.

Thomas J. Duffy, Esq., Department of the Army, for the agency.

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DIGEST

1. Although agency did not give protester an opportunity to comment on each individual survey response regarding past performance, discussions were adequate where agency identified multiple categories in which protester's past performance was deficient and protester has not identified any other past performance areas under which its proposal was downgraded.
2. Agency's cost realism analysis was adequate where the agency reasonably considered the likely cost of awardee's performance, including a determination that the awardee's proposed manning levels were adequate to perform the solicitation tasking requirements.

DECISION

Pacific Architects and Engineers, Inc. (PAE) protests the Department of the Army's award of a contract to DynCorp under request for proposals (RFP) No. DAHC92-95-R-0132. PAE, the incumbent contractor, argues that the agency failed to conduct adequate discussions, improperly evaluated its proposal, and failed to perform an adequate cost realism analysis.¹

We deny the protest.

¹The protester initially raised other arguments that were the subject of a partial dismissal earlier in this proceeding.

BACKGROUND

On April 26, 1996, the agency issued the RFP, seeking proposals to provide base operations support services (BOSS) to the Army at Soto Cano Air Base, Honduras. The RFP contemplated the award of a cost-plus-award-fee contract for a base period with four 1-year option periods.

The solicitation provided that proposals would be evaluated, in descending order of importance, on the basis of management, technical and cost factors, and stated that the evaluation would also incorporate a performance risk assessment.² With their proposals, offerors were required to submit multiple references regarding their performance of recent contracts for similar services. Under the management factor, the RFP listed three subfactors, the most important being past performance. The RFP also provided that award would be based on the proposal offering the best value to the government following an integrated assessment of all evaluation factors.

PAE and DynCorp submitted initial proposals by the June 13, 1996, closing date; each proposal listed multiple past performance references. Upon receipt, the contracting officer sent past performance surveys to each reference and subsequently evaluated the initial proposals. At the time evaluation of initial proposals was completed, the agency had received past performance responses regarding two of PAE's prior contracts--the predecessor BOSS contract at that Soto Cano Air Base and another contract for similar services performed in Japan.

Following initial evaluation, the agency had certain concerns regarding PAE's proposal, including negative past performance information and the agency's conclusion that PAE's proposed manning levels were excessive. By letters dated June 28, the agency conducted written discussions with both offerors, which consisted of multiple "items for negotiation" (IFNs). Discussions with PAE included the following:

"IFN # 32

Contractor's past performance input from Japan has indicated less than minimum performance in PAE's internal quality control plan, contractor's initiative, timely providing adequate resources, personnel turnover, data reporting and average initiative to initiate and employ

²The RFP specifically stated: "performance risks are those associated with an offeror's ability to perform the solicitation's requirement as indicated by that offeror's record of past and current performance."

cost savings. Panama's input notes a number of problems with government property accountability, initiative to employ cost savings, implementation of TQM and employees relations training."³

Regarding PAE's proposed manning levels, discussions included the following:

"IFN # 28

Labor Hours. Overall [PAE's proposal] has overestimated the hours of labor. [PAE's] labor structure more or less resembles the current contractor labor structure [but] the U.S. labor hours are higher than current contract hours, and the estimate for local hours appears to be unreasonabl[y] high. Explain why [deleted] [hours per year] is used to calculate hours required under the contract. . . ."

On July 11, both offerors submitted best and final offers (BAFOs). PAE's BAFO incorporated responses to each IFN, including those quoted above. Regarding past performance, PAE essentially maintained either that it was without fault or disagreed with the negative assessments. Regarding its proposed staffing levels, PAE's BAFO reflected its view that the manning levels in its initial proposal were appropriate. Subsequently, the agency received additional survey responses regarding PAE's past performance.

BAFO evaluation resulted in PAE's BAFO receiving a management rating of outstanding with "moderate" risk;⁴ a technical rating of outstanding; and an evaluated price of [deleted]. DynCorp's BAFO received a management rating of outstanding with "low" risk;⁵ a technical rating of good; and an evaluated price of [deleted]. The agency determined that DynCorp's proposal offered the best value to the government and awarded a contract to that firm on August 26. This protest followed.

³The BOSS contract at Soto Cano Air Base is administered from Panama.

⁴Under the agency's source selection plan, a rating of "low" performance risk meant that "little doubt exists, based on the offeror's performance record, that the offeror can perform the proposed effort." A performance risk rating of "moderate" meant that "some doubt exists, based on the offeror's performance record, that the offeror can perform the proposed effort." A performance risk rating of "high" meant that "significant doubt exists, based on the offeror's performance record, that the offeror can perform the proposed effort."

⁵The agency received nine responses from DynCorp's past performance references with no negative comments.

DISCUSSION

PAE first protests that the award to DynCorp is improper because the agency failed to discuss each individual comment it received regarding PAE's past performance.⁶ PAE also complains that, after discussions were completed, the agency received and reviewed additional responses to the past performance surveys which had been sent to PAE's references. PAE asserts that the agency's failure to discuss all survey responses with PAE violates Federal Acquisition Regulation (FAR) § 15.610(c)(6) (FAC 90-31), which provides that, when conducting discussions, the contracting officer shall:

"Provide the offeror an opportunity to discuss past performance information obtained from references on which the offeror had not had a previous opportunity to comment. Names of individuals providing reference information about an offeror's past performance shall not be disclosed."

The agency responds that IFN # 32, quoted above, gave PAE an opportunity to comment on the past performance information the agency had at the time discussions were conducted. Further, the agency maintains that the survey responses received after discussions did not have any impact on PAE's past performance rating. The agency explains that the negative information regarding PAE's performance as the incumbent contractor on the Soto Cano BOSS contract, along with the negative information regarding PAE's performance of a similar contract in Japan, formed a reasonable basis for the agency to conclude that "some doubt exists, based on [PAE's] performance record, that [PAE] can successfully perform the proposed effort."

We do not view the requirements of FAR § 15.610(c)(6) as requiring an agency to provide offerors with verbatim comments regarding all past performance surveys received. Indeed, such an approach could well violate the provision of this FAR section which proscribes disclosing to an offeror the identity of the individuals providing the past performance information. In evaluating whether there has been sufficient disclosure of information during discussions, the focus is on whether the agency imparted sufficient information to afford the offeror a fair and reasonable opportunity to respond to the problems identified. See Aydin Computer and Monitor Div., Aydin Corp., B-249539, Dec. 2, 1992, 93-1 CPD ¶ 135.

Here, in conducting discussions with PAE, the agency identified multiple categories of past performance problems including: internal quality control; timely providing

⁶The past performance surveys contained a total of 43 questions regarding various areas of performance.

adequate resources; personnel turnover; data reporting; initiative to employ cost savings; accountability for government property; implementation of TQM; and employee training. Although PAE has now reviewed all of the surveys which the agency received, PAE has not identified any basis on which its proposal was downgraded for past performance which does not fall within one or more of the problem categories which were called to its attention during discussions. On this record, we see no merit in PAE's assertion that the agency failed to conduct adequate discussions regarding past performance.

PAE next protests that it was improper for the agency to consider PAE's implementation of total quality management (TQM) techniques in its performance of the prior Soto Cano contract, since the terms of the solicitation under which that contract was awarded did not expressly require use of TQM techniques. It is undisputed that the current solicitation includes the TQM requirement.

The protest regarding this issue is untimely. In the discussion questions sent to PAE on June 28, the agency clearly advised PAE that it viewed its TQM efforts under the prior BOSS contract as a relevant consideration in assessing past performance, specifically referring to "problems with . . . implementation of TQM." Not only did PAE fail to raise the issue at that time, its response is not consistent with its current assertion that it had no obligation to implement TQM techniques under the prior contract. Specifically, PAE responded:

"The last problem dealing with this question [IFN #32] is in regard to our implementation of TQM. This problem surfaced recently on our [prior BOSS contract] when our Program Manager, because of an emergency, had to be replaced on the contract. At the time of his emergency, he was almost finished with the submittal of our TQM Plan. We recently have replaced our previous manager, but the TQM Plan remained incomplete. Last month, we sent our Corporate QC Manager to Panama to meet with the [agency] COR and resolve the problem. Our Corporate QC Manager provided the COR with a 30 day schedule for submittal of a site-specific TQM Program, which met with approval from the COR."

Our Bid Protest Regulations require that a protest be filed not later than 10 days after the protester knew or should have known its basis for protest. Bid Protest Regulations, § 21.2(a)(2), 61 Fed. Reg. 39,039, 39,043 (July 26, 1996) (to be codified at 4 C.F.R. § 21.2(a)(2)). Here, PAE was advised by letter dated June 28 that the agency was assessing its TQM efforts under the prior contract in connection with its evaluation under this procurement; since it did not raise this

matter until after the contract to DynCorp was awarded on August 26, this issue is not timely filed. Id.⁷

Finally, PAE protests that the agency's cost realism analysis was either nonexistent or inadequate. PAE maintains that DynCorp's staffing levels are unrealistic and that the actual cost to the government will be greater than that stated in DynCorp's proposal.⁸

Where an agency evaluates proposals for a cost contract, an offeror's proposed estimated costs are not controlling since they may not provide valid indications of actual costs to the government. See Global Assocs., supra. However, an agency is not required to verify each and every item in conducting its cost analysis. Theta Eng'g. Inc., B-271065; B-271065.2, June 12, 1996, 96-2 CPD ¶ 76. Generally, an agency's determination that an offeror's technical approach will satisfy the solicitation requirements and that the offeror's corresponding cost proposal reflects the costs reasonably associated with the technical approach provides an adequate basis for determining cost reasonableness. See The Research Found. of State Univ. of New York, B-274269, December 2, 1996, 96-2 CPD ¶ 207; Sociometrics, Inc., B-261367.2; B-261367.3, Nov. 1, 1995, 95-2 CPD ¶ 201.

Here, it is undisputed that the difference in proposed manning levels is the overwhelming basis for the approximately \$4.5 million difference in the cost of the two proposals. Specifically, PAE proposed an overall manning level of [deleted], while DynCorp proposed a manning level of [deleted]. In evaluating proposals, the evaluators specifically considered whether each offeror's proposed manning level was appropriate for the RFP's tasking requirements.⁹ The evaluators determined that DynCorp's proposed manning levels for the various tasks were adequate and that PAE's were excessive.¹⁰ In addition to considering the manning levels

⁷In any event, since PAE, in fact, attempted to implement TQM techniques under the prior Soto Cano contract, we see no basis why the agency could be precluded from assessing those efforts.

⁸In 1992, the then-incumbent BOSS contractor at the Soto Cano Air Base unsuccessfully filed a virtually identical challenge to the agency's award of a contract to PAE. Global Assocs., B-244367.3, Feb. 26, 1992, 92-1 CPD ¶ 229.

⁹The agency evaluators were subject matter experts regarding the various tasks, several of whom worked daily with PAE under the prior Soto Cano BOSS contract.

¹⁰As noted above, the agency clearly communicated its conclusion regarding PAE's proposed manning levels to PAE during discussions, expressly stating that its
(continued...)

proposed, the agency reviewed the wage rates proposed by DynCorp, concluding that they complied with Honduran law and that labor could be reasonably obtained at the rates proposed.¹¹

Moreover, PAE's own conduct demonstrates its recognition that its proposed manning levels could be reduced, as was done by DynCorp. Specifically, in connection with the agency's extension of PAE's contract--necessitated by this protest--PAE submitted a memorandum to the agency's administrative contracting officer containing the following statement:

"Previously we accomplished a scrub of the manning in preparation for submission of the PAE proposal for the follow on contract and had planned on a reduction of approximately 65 employees"

As an attachment to this memorandum, PAE included a document, dated May 28, 1996, in which it identified, by category, areas in which manning levels could be reduced.

Because the contracting agency is in the best position to make the cost realism determination, our review in this regard is limited to a determination of whether the agency's cost realism analysis is reasonably based and not arbitrary. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. An agency may rely on information contained in offerors' cost proposals in performing a cost evaluation without seeking additional independent verification of each item of proposed costs, since the extent to which proposed costs will be examined is generally a matter for the agency to determine. Id. Finally, even where an agency's cost analysis prior to award contains flaws, this Office may consider information in addition to that on which the agency relied in evaluating proposals. See, e.g., The Boeing Co., B-259255.5, May 15, 1995, 95-1 CPD ¶ 284.

Here, the agency determined that the technical approach proposed by DynCorp would meet the solicitation requirements and that the corresponding cost proposal

¹⁰(...continued)

proposal "overestimated the hours of labor" and noting that "[PAE's proposed] labor structure more or less resembles the current contract labor structure." In its BAFO, PAE declined to decrease the proposed manning levels.

¹¹The record shows that, in many cases, the wage rates DynCorp proposed to pay its employees were actually higher than the rates PAE is paying its employees under the current BOSS contract.

reasonably reflected the costs associated with that approach.¹² On the record here, we find no merit in PAE's assertion that the agency failed to perform an adequate cost realism analysis.

The protest is denied.

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¹²In addition to challenging the realism of DynCorp's proposed manning levels, PAE identified various other minor aspects of DynCorp's cost proposal which PAE maintains do not reflect the actual costs to the government. Even if each of PAE's assertions were valid, by PAE's own calculations, the alleged understatement of costs would amount to less than \$600,000. The source selection official has stated that, in light of the approximately \$4.5 million difference in the proposed costs, an increase in DynCorp's proposed cost of \$600,000 would not alter the source selection decision. Accordingly, even if all of these assertions were valid, there would be no prejudice to PAE.